BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: DARYL DEAN BEHRENS 213 W. Center Street Hanford, California 93230 CPA Certificate No. 18111 Respondent	No. AC-92-11 OAH No. N-9403137

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Accountancy as the Decision in the above-entitled matter.

This Decision shall become effective on March 9, 1995.

IT IS SO ORDERED February 7, 1995.

BOARD OF ACCOUNTANCY
STATE OF CALIFORNIA

BY: [signature]

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BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
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In the Matter of the Accusation Against: DARYL DEAN BEHRENS 213 W. Center Street Hanford, CA 93230 Certified Public Accountant License No. EW18111, Respondent.	No. AC-92-11 OAH No. N-9403137

PROPOSED DECISION

On October 3, 1994, in Fresno, California, John D. Wagner, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Complainant was represented by Arthur Taggart, Deputy Attorney General.

Respondent was present and represented by Dennis M. Lynch, Attorney at Law.

Evidence was received, a written stipulation of facts was entered into, the record was closed and the matter was submitted.

FINDINGS OF FACT

I

Complainant Carol Sigmann made the Statement of Issues in her official capacity as Executive Officer, Board of Accountancy, Department of Consumer Affairs.

II

On December 8, 1972, the Board issued certified public accountant license number EW18111 to respondent. Said license was in full force and effect at all times pertinent herein.

III

A. In 1987, respondent prepared compilations of financial statements for Chicken Ranch Bingo Enterprise covering the six month and eight month periods ending November 30, 1986, and January 31, 1987, respectively; and for Chicken Ranch Bingo Management, Inc., covering the year ending December 31, 1986. The compiled financial statements for these entities were presented on the accrual basis of accounting.

B. Both of the above entities came into existence in 1984. Their purpose was to provide Bingo gambling on indian lands. The particular purpose for Chicken Ranch Bingo Management, Inc., was to provide management services in financing and running bingo operations. It shared in net profits and investment debt. Respondent provided accounting services for it.

In May 1985, two limited partnerships were formed to raise capital for Chicken Ranch Bingo Management, Inc. At this time, respondent acquired a 25 percent interest in this management corporation. He became an officer of the corporation in late 1985 or early 1986. Beginning in approximately October 1985, the management corporation was no longer earning a profit.

C. The above compilations issued by respondent were prepared for the use of the tribal counsel and an investors' committee. Their purpose was to show financial condition. They contained deviations from the prescribed standards that constitute violations of California Code of Regulations, Title 16, Division 1, Article 9, section 58.3(a), as follows:

1. Respondent did not disclose his lack of independence in the compilation reports for Chicken Ranch Bingo Enterprise for the six months ending November 30, 1986, and for the eight months ending January 31, 1987. Respondent's lack of independence arose from his ownership interest in Chicken Ranch Bingo Management, Inc.

2. Respondent makes reference to his lack of independence in the second of three paragraphs comprising the compilation report for Chicken Ranch Bingo Management, Inc., for

applicable standard of practice requires the accountant who is not independent with respect to an entity to disclose this fact in the last paragraph of the compilation report.

D. In 1986 and 1987, respondent was an officer of Chicken Ranch Bingo Management, Inc., and in this capacity, took part in the management of the bingo operations of Chicken Ranch Bingo Enterprise. He received a percentage of profits of the management corporation. As indicated above, Chicken Ranch Bingo Management, Inc., raised money through limited partnerships, including Jamestown Bingo Enterprises II, in which respondent was an investor. Respondent's managerial control and personal investment created a conflict of interest within the meaning of California Code of Regulations, Title 16, Division 1, Article 9, section 57.

E. Respondent used his name with estimates of earnings by signing as CPA, on his firm's letterhead, an opinion on the forecast of Chicken Ranch Bingo Management, Inc., dated June 12, 1984. The document was contained in a private placement memorandum for Jamestown Bingo Place, Inc. Said action constitutes a violation of California Code of Regulations, Title 16, Division 1, Article 9, section 64.

Although the written opinion was initially prepared for the management corporation, not new investors, it was later put into a prospectus in the private placement memorandum. Upon learning of this, respondent did not advise the new investors that it had been used improperly.

IV

In January 1991, respondent borrowed $28,000 from P.Y.H., a client. On July 27, 1991, respondent issued a check to P.Y.H. totaling $29,785 for principal and interest. The check was not honored because respondent did not have sufficient funds in his account. When Client P.Y.H. confronted respondent about the dishonored check, respondent issued a notarized promissory note for $30,000 on October 27, 1991. Under the terms of the promissory note, respondent agreed to repay P.Y.H. $10,000 on November 15, 1991, and on the 15th day of each month thereafter. Respondent has only paid $10,000 to date. Respondent knowingly issued the check for $29,785 without sufficient funds in his account to honor the check.

Respondent's issuance of the check for $29,785 to P.Y.H. when there were insufficient funds to honor the check constitutes fiscal dishonesty and a breach of fiduciary responsibility within the meaning of California Code of Regulations, Title 16, Division 1, Article 9, section 60.

Respondent's failure to meet his obligations under the terms and conditions of the executed promissory note and, in particular, his failure to pay P.Y.H. $30,000 by January 15, 1992, also constitutes fiscal dishonesty and a breach of fiduciary responsibility within said section of the California Code of Regulations.

V

On or about August 2, 1988, respondent borrowed $60,000 from Otto Baker, Inc., a client, pursuant to a duly executed promissory note secured by a deed of trust. The note was due and payable on September 16, 1988, and would pay 18 percent interest per annum. Respondent failed to pay $60,000 on September 16, 1988, as agreed under the terms of the note. Under these terms, respondent was responsible for preparing and filing a deed of trust on his personal residence. However, respondent failed to file the deed of trust. On or about October 24, 1988, respondent issued a check payable to Otto Baker, Inc., for $62,337.54 in payment of the amount due under the terms of the note. The check was not honored because respondent did not have sufficient funds in his account. Respondent knowingly issued the check without sufficient funds in his account to honor the check.

The $60,000 received from Otto Baker, Inc., was intended for a real estate investment. Respondent did not invest it as intended. He invested it in an indian gambling operation. The gambling operation failed.

Respondent's issuance of the check for $62,337.54 to Otto Baker, Inc., when there were insufficient funds to honor the check constitutes fiscal dishonesty and a breach of fiduciary responsibility within the meaning of California Code of Regulations, Title 16, Division 1, Article 9, section 60.

Respondent's failure to repay the loan on September 16, 1988, and his failure to file the deed of trust as required under the terms of the note also constitutes fiscal dishonesty and a breach of fiduciary responsibility owed to Otto Baker, Inc., pursuant to said section of the California Code of Regulations.

VI

Respondent is 51 years old, married, and has four minor children in his home. His accounting practice is now limited to tax and general accounting. He is no longer in the investment business. Approximately 55 percent of his business involves audits of school districts, special districts, and cities. Approximately 45 percent involves tax preparation.

In August 1994, respondent's partner died. Respondent is the last surviving partner for the practice. To protect clients, respondent has arranged to sell the remaining practice. The purchasing firm has been helping to complete audits since September. When the sale is complete, the new firm will provide accounting services to respondent's clients and respondent will be a consultant. Respondent's employees are already the new firm's employees.

Acting on a petition filed on April 8, 1993, by respondent, the United States Bankruptcy Court (Eastern District of California) in Case No. 92-11972 ordered the amounts owed to P.Y.H. ($30,000) and Otto Baker, Inc. ($81,000) discharged under Chapter 11.

VII

The reasonable costs of investigation and prosecution of this case by the Board of Accountancy are $9,669.59 (as of September 2, 1994).

DETERMINATION OF ISSUES

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

I

Cause for discipline of respondent's license for unprofessional conduct was established for violations of section 5100(f) of the Business and Professions Code, by reason of Finding III.

II

Said cause was established for violations of section 5100(h) of said Code, by reason of Finding IV.

III

Said cause was established for violations of section 5100(h) of said Code, by reason of Finding V.

IV

In view of the seriousness of the violations, particularly the violations contained in Findings IV and V, the recentness of said violations, and the limited evidence of rehabilitation, respondent's license should be revoked. With respect to respondent's rehabilitation as evidenced by his recent sale of his practice to protect his clients after the death of his partner, said evidence is of limited value because protection of clients is the professional standard that is expected of all accountants. Respondent's violations are aggravated by the fact that at least two clients have lost substantial monetary amounts and have not been fully reimbursed.

V

The reasonable costs of investigation and prosecution set forth in Finding VII, are payable 120 days after the Board's decision in this case is final.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Certified public accountant license number EW18111 issued to Daryl Dean Behrens is revoked. Respondent shall pay the sum of $9,669.59 to the Board of Accountancy within 120 days after this decision is final.

Dated: December 1, 1994

John D. Wagner
JOHN D. WAGNER
Administrative Law Judge
Office of Administrative Hearings

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BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: DARYL DEAN BEHRENS 213 W. Center Street Hanford, CA 93230 Certified Public Accountant License No. EW18111, Respondent.	No. AC-92-11 ACCUSATION

Complainant Carol Sigmann (hereinafter "Complainant") alleges as follows:

1. Complainant is the Executive Officer for the Board of Accountancy, Department of Consumer Affairs, State of California (hereinafter "Board"). Complainant makes and files the instant accusation in her official capacity with the Board, and in no other capacity.

2. On December 8, 1972, the Board issued certified public account license No. EW18111 to Daryl Dean Behrens (hereinafter "Respondent"); said license was in full force and effect at all times pertinent herein.

/ / /

STATUTES AND REGULATIONS

3. Business and Professions Code section 5100(c) provides that gross negligence in the practice of public accountancy constitutes grounds for disciplinary action for unprofessional conduct.

4. Business and Professions Code section 5100(f) provides that willful violation of any rule or regulation promulgated by the Board constitutes grounds for disciplinary action for unprofessional conduct.

5. Business and Professions Code section 5100(h) provides that fiscal dishonesty or breach of fiduciary responsibility of any kind constitutes unprofessional conduct that may be disciplined by the Board.

6. California Code of Regulations, Title 16, Division 1, Article 9, section 57 states that a licensee shall not concurrently engage in the practice of public accountancy and in any other business or occupation which impairs the licensee's independence, objectivity, or creates a conflict of interest in rendering professional services.

7. California Code of Regulations, Title 16, Division 1, Article 9, section 58.3(a) provides that this rule defines the compilation of financial statements and the review of financial statements of a non-public entity and provides guidance to accountants concerning the standards and procedures applicable to such engagements. The accountant is required to issue a report conforming to professional standards whenever he completes a compilation or review of the financial statements of a non-public entity. The accountant should not issue any report on the

unaudited financial statements of a non-public entity or submit such financial statements to his client or others unless he complies with such professional standards.

8. California Code of Regulations, Title 16, Division 1, Article 9, section 60 states that a licensee shall not engage in conduct which constitutes fiscal dishonesty or breach of fiduciary responsibility of any kind.

9. California Code of Regulations, Title 16, Division 1, Article 9, section 64 indicates that a licensee shall not permit the use of his name in conjunction with an estimate of earnings contingent upon future transactions in a manner which may lead to the belief that the accountant vouches for the accuracy of the forecast.

10. Business and Professions Code section 5107 provides for recovery by the Board of costs of investigation and prosecution in disciplinary actions. A certified copy of the actual costs, or a good faith estimate of the costs, signed by the executive officer are prima facie evidence of the costs.

STANDARDS OF PRACTICE

11. Accounting Research Bulletin No. 43 (ARB), Chapter 9C, paragraph 5, indicates that depreciation accounting aims to distribute the cost or other basic value of tangible capital assets, less any salvage value, over the estimated useful life of the unit (which may be a group of assets) in a systematic and rational manner. It is the essence of the matching principle that as revenues are generated, assets are sold or consumed, and the costs of these assets are recognized and reported as expenses of the period the related revenue is recognized. Expenses such

as depreciation are recognized over time because their asset counterparts expire over time. Excluding depreciation from the financial statements constitutes a departure from one of the most fundamental principles of accounting.

12. Accounting Principles Board Omnibus Opinion No. 12 (APB), paragraph 4, indicates that disclosure of the total amount of depreciation expense entering into the determination of results of operations is considered general practice. Paragraphs 9 and 10 require disclosure of the changes in the separate accounts comprising stockholders' equity when both financial position and results of operations are presented.

13. APB Opinion No. 28, "Interim Financial Reporting," paragraph 15a, indicates that costs and expenses other than product costs should be charged to income in interim periods as incurred, or be allocated among interim periods based on an estimate of time expired, benefit received, or activity associated with the periods. When a specific cost or item charged to expense for annual reporting purposes benefits more than one interim period, the cost or expense item may be allocated to those interim periods.

14. APB Opinion No. 11, "Accounting for Income Taxes," requires that entities match against the revenue of a period an amount of income tax expense based on the reported pre-tax accounting income of that period, regardless of the amount of tax payable per the related income tax returns.

15. FASB Interpretation No. 18, "Accounting for Income Taxes in Interim Periods," indicates that estimated income taxes should be apportioned to interim periods, viewed as integral

parts of the annual period.

16. Statement of Financial Accounting Concepts No. 6 (SFAC), "Elements of Financial Statements," defines liabilities as probable future sacrifices of economic benefits arising from present obligations of a particular entity to transfer assets or provide services to other entities in the future as a result of past transactions or events. SFAC No. 6 indicates that a liability should be immediately recognized and recorded when the following conditions hold:

A. An obligation exists that can be satisfied only by the transfer of an asset or a service to another entity;

B. The event that gave rise to the obligation has occurred;

C. The obligation is probable.

SFAC No. 6 defines assets as business resources that have probable future economic benefits. SFAC No. 6 indicates that an asset should be recorded when the resources:

A. Have future economic benefits;

B. Are under management's control;

C. Result from past transactions.

17. Statements of Financial Accounting Standards No. 5 (SFAS), "Accounting for Contingencies," indicates that when probable and estimable, estimated uncollectible accounts receivable must be recorded. The matching principle requires that the loss from uncollectibles be recognized in the period of sale.

18. SFAS No. 4, entitled "Reporting Gains and Losses From Extinguishment of Debt," requires that gains and losses from

extinguishment of debt (whether early, at maturity, or after maturity) be classified as extraordinary and disclosed net of tax effect.

19. SFAS No. 64, "Extinguishment of Debt Made to Satisfy Sinking-Fund Requirements," amended SFAS No. 4 by restricting the exemption from extraordinary classification to those gains and losses from extinguishments made to satisfy sinking-fund requirements met within one year of the date of the extinguishment, regardless of the means used to retire the debt.

20. APB Opinion No. 19, "Reporting Changes in Financial Position," required presentation of the Statement of Changes in Financial Position as part of the basic financial statements of an entity. APB Opinion 19 was applicable for the reporting periods covered in the licensee's engagements. APB Opinion No. 19 was superseded by SFAS No. 95, "Statement of Cash Flows," effective for fiscal years ended after July 15, 1988.

21. Statements of Standards for Accounting and Review Services No. 1 (SSARS), "Compilation and Review of Financial Statements," paragraph 21, indicates that management's election to omit the Statement of Cash Flows and, thus, its predecessor, the Statement of Changes in Financial Position, should be disclosed in the third paragraph of the compilation report.

22. SSARS No. 1, paragraph 43, indicates that when the basic financial statements are presented for supplementary analysis purposes, the accountant should clearly indicate the degree of responsibility he is taking with respect to such information, if any. SSARS No. 1, paragraph 22, requires the accountant who is not independent with respect to an entity to

disclose this fact as the last paragraph of the compilation report.

ENGAGEMENTS FOR CHICKEN RANCH BINGO ENTERPRISE AND CHICKEN RANCH BINGO MANAGEMENT, INC.

23. In 1987, Respondent prepared compilations of financial statements for Chicken Ranch Bingo Enterprise for the six months and eight months ended November 30, 1986 and January 31, 1987, respectively, and Chicken Ranch Bingo Management, Inc. for the year ended December 31, 1986. The compiled financial statements for these entities were presented on the accrual basis of accounting and omit substantially all disclosures required by generally accepted accounting principles.

24. The compiled financial statements for Chicken Ranch Bingo Enterprise for the six months ended November 30, 1986 and the compiled financial statements for Chicken Ranch Bingo Enterprises for the eight months ended January 31, 1987 contain departures from generally accepted accounting principles (GAAP). Each of the following GAAP departures constitutes gross negligence within the meaning of Business and Professions Code section 5100(c), and violations of Business and Professions Code section 5100(f) in conjunction with California Code of Regulations, Title 16, Division 1, Article 9, section 58.3(a); said omission and the corresponding standard of practice are as follows:

A. Respondent failed to include depreciation on the compiled financial statements in violation of the standards of practice set forth in <u>Accounting Research Bulletin No. 43, Chapter 9c, paragraph 5</u>; <u>Accounting Principles Board Omnibus</u>

Opinion No. 12 (APB), paragraph 4; and APB Opinion No. 28, "Interim Financial Reporting," paragraph 15a.

B. Respondent failed to disclose changes in stockholder's equity in the compiled financial statements in violation of the standard of practice set forth in APB Omnibus Opinion No. 12, paragraphs 9 and 10.

C. Respondent excluded the tax provision and tax accrual from the compiled financial statements in violation of the standard of practice found in APB Opinion No. 11, "Accounting for Income Taxes;" APB Opinion No. 28, "Interim Financial Reporting;" and FASB Interpretation No. 18, "Accounting for Income Taxes in Interim Periods."

D. Respondent's compilation report for the six months ended November 30, 1986 indicates that the Statement of Changes in Financial Position is included in the compiled financial statements. No Statement of Changes appears with the compiled financial statements, as required by APB Opinion No. 19, "Reporting Changes in Financial Position."

25. In the financial statements compiled for Chicken Ranch Bingo Enterprise for the six months and eight months ended November 30, 1986 and January 31, 1987, respectively, Respondent improperly reported financial information; said failures to properly report information collectively constitute gross negligence within the meaning of Business and Professions Code section 5100(c), and constitute violations of 5100(f) in conjunction with California Code of Regulations, Title 16, Division 1, Article 9, section 58.3(a).

A. Respondent reports the negative bank balance for "Cash in Bk--First Interstate" on the Balance Sheet for Chicken Ranch Bingo Enterprise as of November 30, 1986 and for "Cash in Bank--B of A P/R" on the Balance Sheet as of January 31, 1987 as current assets; reporting of the negative bank balance in said manner is a violation of the standards of practice set forth in Statement of Financial Accounting Concepts No. 6 (SFAC), "Elements of Financial Statements." Overdraft balances occur when the dollar amount of checks honored by the bank exceeds the account balance. Simply stated, money is owed by the entity, which constitutes a liability.

B. The accounts receivable balances for Chicken Ranch Bingo Enterprise as of November 30, 1986 and January 31, 1987 do not reflect estimated uncollectible accounts; said failure to indicate estimated uncollectible accounts constitutes a violation of the standards of practice set forth in Statements of Financial Accounting Standards No. 5 (SFAS), "Accounting for Contingencies."

C. The liability section of the Balance Sheets for Chicken Ranch Bingo Enterprise at November 30, 1986 and January 31, 1987 reports debit balances of $172,954.47 and $208,067.12, respectively, as "Contra Pay--Chicken Rancheria (55%)"; said reporting of debit balances constitutes a violation of the standards of practice set forth in SFAC No. 6.

D. Respondent treats amounts identified as "debt service" as expenses on the income statements for Chicken Ranch Bingo Enterprise for the six months ended November 30, 1986 and for the eight months ended January 31, 1987. It is unclear what is meant by the term "debt service," which appears to be set forth as an extraordinary item, although not labeled as such. Reporting of expenses in said manner constitutes a violation of the standards of practice set forth in SFAS No. 4, entitled "Reporting Gains and Losses From Extinguishment of Debt" and SFAS No. 64, "Extinguishments of Debt Made to Satisfy Sinking-Fund Requirements."

E. Respondent includes "N/P--Mgmt. Co.--Constr. Cost," with a balance of $1,420,839.48, as a current liability on the balance sheets for Chicken Ranch Bingo Enterprise as of November 30, 1986 and January 31, 1987. This obligation represents a five-year loan. Liabilities due beyond one year from the current balance sheet date or the normal operating cycle of the business, whichever is longer, are classified as long-term liabilities.

26. In addition to the deficiencies described in paragraphs 24 and 25 above, compilations issued by Respondent contain other deviations from prescribed standards that constitute violations of California Code of Regulations, Title 16, Division 1, Article 9, section 58.3(a) and, in conjunction therewith, violations of Business and Professions Code section 5100(f). These departures are described below.

A. The basic financial statements for Chicken Ranch Bingo Enterprise are accompanied by Schedules of Sales and Cost of Sales for the entity's bingo operations. Respondent did not indicate in his compilation reports the degree of responsibility he takes with respect to the supplementary information. Respondent also did not distinguish supplementary information from the basic financial statements. Said omissions constitute a violation of the standards of practice set forth in SSARS No. 1, paragraph 43.

B. Respondent does not state that management has elected to omit the Statement of Changes in Financial Position in compilation reports for Chicken Ranch Bingo Enterprise for the six months ended November 30, 1986 and for the eight months ended January 31, 1987. Likewise, Respondent does not indicate that management has elected to omit the Statement of Changes in the compilation report for Chicken Ranch Bingo Management, Inc. for the year ended December 31, 1986. Said omissions constitute a violation of the standards of practice set forth in Statements on Standards for Accounting and Review Services No. 1 (SSARS), "Compilation and Review of Financial Statements," paragraph 21.

C. Respondent does not disclose his lack of independence in compilation reports for Chicken Ranch Bingo Enterprise for the six months ended November 30, 1986 and for the eight months ended January 31, 1987. Respondent's lack of independence arises from his ownership interest in Chicken Ranch Bingo Enterprise. Respondent makes reference to his lack of independence in the second of three paragraphs comprising the compilation report for Chicken Ranch Bingo Management, Inc. for the year ended December 31, 1986. SSARS No. 1, paragraph 22 requires the accountant who is not independent with respect to an entity to disclose this fact as the last paragraph of the compilation report.

27. In or about 1986 and 1987, Respondent was an officer of Chicken Ranch Bingo Management, Inc., and, in this capacity, took part in the management of the bingo operations of

Chicken Ranch Bingo Enterprise. He received a percentage of profits of the management company. Chicken Ranch Bingo Management, Inc. raised money through limited partnerships including Jamestown Bingo Enterprises II, in which Respondent was an investor. Respondent's managerial control and personal investment created a conflict of interest within the meaning of California Code of Regulations, Title 16, Division 1, Article 9, section 57.

28. Respondent used his name with estimates of earnings by signing as CPA, on his firm's letterhead, an opinion on the forecast of Chicken Ranch Bingo Management, Inc., dated June 12, 1984. The document was contained in a private placement memorandum for Jamestown Bingo Place, Inc. Said action constitutes a violation of California Code of Regulations, title 16, Division 1, Article 9, section 64.

<u>LOAN FROM CLIENT P.Y.H.</u>

29. In January of 1991, Respondent borrowed $28,000 from P.Y.H., a client. On July 27, 1991, Respondent issued a check to P.Y.H. totaling $29,785 for principal and interest. The check was not honored because Respondent did not have sufficient funds in his account. When client P.Y.H. confronted Respondent about the dishonored check, Respondent issued a notarized promissory note for $30,000 on October 27, 1991. Under the terms of the promissory note, Respondent agreed to repay P.Y.H. $10,000 on November 15, 1991, and on the 15th day of each month thereafter. Respondent has only paid $10,000 to date. Respondent knowingly issued the check for $29,785 without sufficient funds in his account to honor the check.

A. Respondent's issuance of the check for $29,785 to P.Y.H. when there was insufficient funds to honor the check constitutes fiscal dishonesty and a breach of fiduciary responsibility within the meaning of Business and Professions Code section 5100(h) and California Code of Regulations, Title 16, Division 1, Article 9, section 60.

B. Respondent's failure to meet his obligations under the terms and conditions of the executed promissory note and, in particular, his failure to pay P.Y.H. $30,000 by January 15, 1992 constitute fiscal dishonesty and a breach of fiduciary responsibility within the meaning of Business and Professions Code section 5100(h) and California Code of Regulations, Title 16, Division 1, Article 9, section 60.

<u>LOAN FROM CLIENT OTTO BAKER, INC.</u>

30. On or about August 2, 1988, Respondent borrowed $60,000 from Otto Baker, Inc., a client, pursuant to a duly executed promissory note secured by a deed of trust. The note was due and payable on September 16, 1988 and would pay 18% interest per annum. Respondent failed to pay $60,000 on September 16, 1988 as agreed under the terms of the note. Under the terms of the note, Respondent was responsible for preparing and filing the deed of trust. However, Respondent failed to file the deed of trust. On or about October 24, 1988, Respondent issued a check payable to Otto Baker, Inc. for $62,337.54 in payment of the amount due under the terms of the note. The check was not honored because Respondent did not have sufficient funds in his account. Respondent knowingly issued the check for $62,337.54 without sufficient funds in his account to honor the

check.

A. Respondent's issuance of the check for $62,337.54 to Otto Baker, Inc. when there was insufficient funds to honor the check constitutes fiscal dishonesty and a breach of fiduciary responsibility within the meaning of Business and Professions Code section 5100(h) and California Code of Regulations, Title 16, Division 1, Article 9, section 60.

B. Respondent's failure to repay the loan on September 16, 1988 and his failure to file the deed of trust as required under the terms of the note constitute fiscal dishonesty and a breach of the fiduciary responsibility owed to Otto Baker, Inc. pursuant to Business and Professions Code section 5100(h) and California Code of Regulations, Title 16, Division 1, Article 9, section 60.

WHEREFORE, Complainant prays that an administrative hearing be held on the matters alleged herein, and that following such hearing, the Board issue a decision:

1. Suspending or revoking certified public accountant license No. EW18111;

2. Ordering the recovery of costs pursuant to Business and Professions Code section 5107; and

3. Taking such other and further action as may be deemed just and proper.

Dated: December 16, 1993

Carol Sigmann

CAROL SIGMANN, Executive Officer
Board of Accountancy
Department of Consumer Affairs
State of California

Complainant